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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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IN THE MATTER OF

Nelson Martin  
2224 Horseshoe Pike  
Annville, Pennsylvania 17003

Docket No. CWA-03-2012-0104DN

Respondent

FINDING OF VIOLATION,  
ORDER FOR COMPLIANCE  
AND  
INFORMATION REQUIREMENT

**I. PRELIMINARY STATEMENT**

1. This Order for Compliance and Information Requirement ("Order and Requirement") are issued to Nelson Martin ("Respondent") under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1318 and Section 309(a) of the CWA, 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of Region III, who in turn has delegated it to the Director of the Water Protection Division of Region III.

**II. STATUTORY AND REGULATORY AUTHORITY**

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) by any person from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. Point Source is defined at 40 C.F.R § 122.2 as any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

4. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
  - a. Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Act;
  - b. Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
  - c. Any requirement under Section 308 of the CWA; and,
  - d. Carrying out Sections 305, 311, 402, 404, and 504 of the CWA.
5. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
6. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
7. Pursuant to 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must seek permit coverage under an NPDES permit if the CAFO discharges.
8. Pursuant to section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of Environmental Protection (“DEP”) to issue NPDES permits in 1978. In 1991, EPA authorized DEP to issue General NPDES Permits.

### **III. FINDINGS OF FACT**

9. On June 8, 2008, DEP approved coverage to the Respondent under Permit # PAG123664 (“the Permit”).
10. Upon information and belief, the Respondent confines in excess of 2,500 swine each weighing 55 pounds or more.
11. Upon information and belief, Respondent owns and operates a permitted Large CAFO located at 2224 Horseshoe Pike, Annville, Pennsylvania.
12. Part A I.C.7 of the Permit, requires the Respondent, among other things, to submit an Annual Report to DEP on the anniversary date of the permit Coverage Approval date.

13. On September 16, 2011, EPA personnel conducted a file review at the DEP Southcentral Regional Office in Harrisburg, PA. There was no evidence in the file that the Respondent submitted an annual report to DEP as required by the Permit for the following reporting year: 2011.

#### **IV. CONCLUSION OF LAW AND FINDING OF VIOLATION**

14. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
15. Respondent has failed to comply with the Permit by not submitting annual reports to DEP.
16. Respondent's failure to submit annual reports to DEP as required by Part A I.C.7 of the Permit constitutes separate violations of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

#### **V. ORDER FOR COMPLIANCE**

AND NOW, this 5<sup>th</sup> day of March, 2012, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) to do the following:

17. Within thirty (30) calendar days of the effective date of this Order, Respondent shall:
- a. Submit a complete annual report for the reporting year 2011 to EPA and DEP as provided for in Paragraph 26 with certification as provided for in Paragraph 25.

#### **VI. INSTRUCTIONS**

18. Provide a separate narrative response for each question contained in this Information Requirement and for each subpart of each question. Precede each answer with the corresponding number of the question to which it responds.
19. Identify each person responding to each question contained in this Information Requirement on behalf of the Respondent, as well as each person consulted in the preparation of the response.
20. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question.
21. Indicate on each document produced in response to this Information Requirement, or in some other reasonable manner, the number of the question to which it corresponds.

22. If tabulation is requested, provide the required information in tabular form in hard copy and also in tabular form in an electronic spreadsheet file in Microsoft Excel format.
23. To the extent information required herein was previously provided to EPA by Respondent, there is no need to provide it again; simply identify the information and the date it was previously provided.
24. If required information or documents are not known or are not available at the time of your response to this Information Requirement, but later become known or available, the Respondent must supplement its response to EPA. Moreover, should the Respondent find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents the facts, the Respondent must provide EPA with a corrected response as soon as possible.
25. All submissions provided pursuant to this Order and Requirement shall be signed and dated by a responsible official of Respondent and include the following certification:

***"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."***

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

26. All submissions shall be sent to following individuals:

Ms. Kyle J. Zieba  
U.S. Environmental Protection Agency, Region III  
MC: 3WP42  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Mr. Scott R. Williamson  
PA Department of Environmental Protection  
South Central Regional Office  
909 Elmerton Ave.  
Harrisburg, PA 17110

27. If you have questions regarding this Information Requirement, you may contact Mr. Andrew Duchovnay of the Office of Regional Counsel at (215) 814-2484 or Ms. Kyle J. Zieba of the NPDES Enforcement Branch at (215) 814-5420.

## **VII. INFORMATION REQUIREMENT**

AND NOW, this 5<sup>th</sup> day of March, 2012, Respondent is hereby REQUIRED, pursuant to Section 308 of the Act, 33 U.S.C. § 1318 to do the following:

28. Within thirty (30) calendar days of the effective date of this Requirement, Respondent shall:
- a. Submit a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.
  - b. For the reporting year 2011, submit a table with the type, number and average weight of all confined animals.
  - c. For the reporting year 2011, submit a table of the actual crop(s) planted and actual yield(s) for each field.
  - d. For the reporting year 2011, submit a table of the actual nitrogen and phosphorus content of the manure, litter, and process wastewater applied to each field.
  - e. For the reporting year 2011, submit a table of the results of calculations conducted to determine the maximum amounts of manure, litter, and process wastewater to be land applied and the amount of manure, litter and process wastewater applied to each field.
  - f. For the reporting year 2011, submit a table of the results of any soil testing for each field for nitrogen and phosphorus taken.
  - g. For the reporting year 2011, submit a table of the amount of any supplemental fertilizer applied to each field.

## **VIII. GENERAL PROVISIONS**

29. Issuance of this Order and Requirement shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

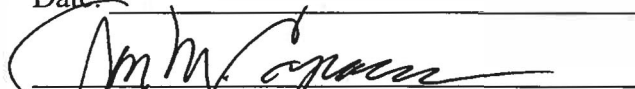
30. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and Requirement, and with any applicable permit. EPA reserves all existing inspection authority.
31. This Order and Requirement does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Requirement does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
32. Violation of the terms and conditions of this Information Requirement pursuant to Section 308 of the Act constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

#### **IX. EFFECTIVE DATE**

The Order and Requirement shall be effective upon receipt by Respondent.

MAR 05 2012

Date:

  
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Jon M. Capacasa, Director  
Water Protection Division